

SPECIAL CIVIL APPLICATION No 3957 of 1988

Hon'ble MR.JUSTICE R.K.ABICHANDANI

[illegible]

RATANSINH NAHURSINH SINCE DECEASED AND LEGAL REPRESENTIV

STATE OF GUJARAT

MR U.A. TRIVEDI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1

Date of decision: 16/06/2000

The grievance of the petitioner is that the Tribunal while rejecting the review application of the petitioner, did not take into account the contention

which was raised by the petitioner that the Advocate for the petitioner Mr. Suresh Kantilal Joshi had gone to United States of America during the period between 2.5.86 and 11.7.86. It appears from the restoration application at Annexure "F", which was made by the petitioner on 28.7.86 that this fact was specifically mentioned by the petitioner in that restoration application. By that restoration application, the petitioner had prayed for restoring application TENDA 64/86(4). The Tribunal made an order on this application as per Annexure "G" on 22.6.87, rejecting that application on the ground that one Shri Jagdishbhai G. Patel had accepted the notice which was sent to the petitioner's Advocate Mr. Joshi. However, the Tribunal did not take into account the fact that Mr. Joshi had gone to United States of America, as stated in the petition. This was a material fact which ought to have been considered by the Tribunal. The Tribunal has therefore, in making the impugned order dated 22.6.1987 at Annexure "G" to the petition, committed an error in exercise of its jurisdiction by not considering the material fact which was brought on record by the petitioner in the application dated 28.7.1986 at Annexure "F" to the petition. The impugned order at Annexure "G" dated 22.6.1987 is therefore hereby set aside and the Tribunal is directed to consider the restoration application No.95 of 1986 dated 28.7.1986 at Annexure "F" to the petition and make a fresh order in the matter after hearing the petitioner, irrespective of any order that it may have made on the review application of the petitioner. The petition is accordingly allowed to this limited extent. Rule is made absolute accordingly with no order as to costs.

*/Mohandas